

Document Redacted for Public Safety Reasons – February 20, 2014

Labor and Industry File No.
BC2606399/CMW

[Link to Final Agency Decision](#)

15-1902-17752-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Jon Chadwick Sellman

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing on May 15, 2007, at the Office of Administrative Hearings pursuant to a Notice and Order for Hearing and Statement of Charges dated December 26, 2006.

Appearances: Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry (Department).

Jon Chadwick Sellman, [address redacted by request], MN [redacted], (Respondent), appeared on his own behalf.

The hearing record closed at the completion of the hearing on May 15, 2007.

STATEMENT OF THE ISSUES

1. By collecting money directly from a customer, did the Respondent violate the Cease and Desist Order issued August 25, 2004, and engage in unlicensed residential building contractor activities?

2. Did the Respondent demonstrate untrustworthiness and financial irresponsibility when he failed to return a down payment to Deborah Aiyawar?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 25, 2004, following an investigation, the Department issued a Consent Cease and Desist Order against Respondent prohibiting further unlicensed residential building contractor, remodeler, or roofer activities.¹

¹ Ex. 1.

2. In December 2006, the Department received a complaint from Deborah Aiyawar in Hanover, Minnesota. Ms. Aiyawar entered into a contract with Handyman Connection for the construction of a deck and footings at her home. Handyman Connection subcontractor, Respondent, went to Ms. Aiyawar's home to prepare the work estimate and collected a check in the amount of \$4,500.² Respondent told Ms. Aiyawar to pay him directly rather than Handyman Connection, and Ms. Aiyawar did so.³

3. The "Labor Evaluation," a written estimate of the labor provided by Respondent to Ms. Aiyawar, clearly states that checks should be payable only to Handyman Connection. It also states that "Customer will Supply and Pay for all Materials Separate from labor."⁴

4. In the course of evaluating the project for Ms. Aiyawar, Respondent noted that the barrier layer behind the siding on her home had not been installed and told Ms. Aiyawar that the deck should not be installed until the barrier was added or the homeowner signed a waiver. Ms. Aiyawar arranged to have the proper weather barrier installed.⁵

5. Ms. Aiyawar contacted Respondent after the barrier repair work had been completed to schedule the deck construction. After several efforts to contact the Respondent and Handyman Connection, Ms. Aiyawar filed a complaint. Since Ms. Aiyawar paid the Respondent and not Handyman Connection, Handyman Connection held the Respondent responsible and directed Ms. Aiyawar to file a complaint against Respondent in Conciliation Court to recover her payment.⁶

6. Respondent did not apply for a license or request an exemption from the residential building contractor license requirements available to a person who files an affidavit stating that he does not anticipate total gross annual receipts from construction projects to exceed \$15,000.⁷ Respondent was told by Handyman Connection that no license was required for his work for that company.⁸ Also, Respondent claimed the money paid by Ms. Aiyawar was for materials and not for labor, and that he had cut posts, fabricated railings and done some staining, but would not provide this to Ms. Aiyawar until he was paid for his effort. Also, he had sold some of the lumber in order to pay off other obligations.⁹

² Ex. 2, Labor Evaluation.

³ Ex. 2, inc. Official Check.

⁴ Ex. 3.

⁵ Ex. 2, letter from Deborah A. Aiyawar, dated July 5, 2006.

⁶ Ex. 2

⁷ Minn. Stat. § 326.84, subd. 3.

⁸ Testimony (Test.) of Jon Chadwick Sellman.

⁹ Test. of J. C. Sellman.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 326.92, 45.027, subd. 1, 45.024, and 14.50 (2006).¹⁰

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The burden is on the Department to prove by a preponderance of the evidence that the Respondent has violated the provisions of law that govern residential remodelers.¹¹

5. A “residential remodeler” is a person who, *inter alia*, offers to contract with an owner to improve existing residential real estate by providing two or more special skills.¹² By entering a contract and accepting payment to build a deck, including footings and staining, Respondent acted as a residential remodeler.

6. By failing to obtain a license or exemption and by collecting money directly from a customer and not forwarding it to Handyman Connection, the Respondent violated the Cease and Desist Order issued August 25, 2004, and engaged in unlicensed residential remodeler activities in violation of Minn. Stat. §§ 326.84 and 326.91, subd. 1 (5).

7. By accepting payment and refusing to supply materials or services to the customer or to return the down payment, Respondent demonstrated untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1 (6).

Based upon these Conclusions, the Administrative Law Judge makes the following:

¹⁰ On May 16, 2005, the Governor signed Executive Order 193, transferring the responsibility for regulation of residential building contractors and remodelers to the Commissioner of Labor and Industry from the Commissioner of Commerce.

¹¹ Minn. Rule part 1400.7300, subp. 5.

¹² Minn. Stat. § 326.83, subs. 16 and 19.

RECOMMENDATION

The Administrative Law Judge recommends that appropriate discipline be imposed.

Dated this 13th day of June, 2007

/s/ Beverly Jones Heydinger

Beverly Jones Heydinger
Administrative Law Judge

Reported: Taped, one tape
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Scott Brener, Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.